

EXHIBIT D

In the Matter Of:

UNITED STATES OF AMERICA v

GOOGLE, LLC

ARNAUD CREPUT

September 05, 2023



1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF VIRGINIA
3 ALEXANDRIA DIVISION

4 -----
5 UNITED STATES OF AMERICA, et al,
6 Plaintiff,
7 vs. Case No.
8 1:23-cv-00108-LMB-JFA
9 Defendant.
10 -----

11
12 **HIGHLY CONFIDENTIAL **
13

14 REMOTE VIDEOTAPED DEPOSITION OF
15 ARNAUD CREPUT
16

17
18
19 Tuesday, September 5, 2023

20 6:05 a.m. (EDT)
21

22
23 Reported by:

24 Joan Ferrara, RMR, FCRR

25 Job No. 2023-910076

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<p>1 MS. ARYANKALAYIL: This is Anna</p> <p>2 Aryankalayil from Orrick for the</p> <p>3 company and for the witness.</p> <p>4 THE VIDEOGRAPHER: If that is</p> <p>5 everyone, thank you.</p> <p>6 Our court reporter today is Joan</p> <p>7 Ferrara and will now swear in the</p> <p>8 witness.</p> <p>9 (Whereupon, DANIEL SHERR and</p> <p>10 SIM SMILEY, Official FRENCH</p> <p>11 Interpreters, were duly sworn to</p> <p>12 translate the proceedings.)</p> <p>13 ARNAUD CREPUT,</p> <p>14 called as a witness, having been</p> <p>15 duly sworn by a Notary Public, was</p> <p>16 examined and testified as follows:</p> <p>17 EXAMINATION BY</p> <p>18 MR. VERNON:</p> <p>19 Q Good morning. Can you state and</p> <p>20 spell your name for the record, please?</p> <p>21 A My name is C-R-E-P-U-T.</p> <p>22 Q Okay. Let me quickly go over a</p> <p>23 few guidelines for the deposition.</p> <p>24 The first guideline is since the</p> <p>25 court reporter is translating what we say,</p>	<p>1 A I joined Equativ in 2015 as the</p> <p>2 CFO and I moved to the CEO position in July</p> <p>3 2018. So like more than 5 years.</p> <p>4 Q As CEO of Equativ, what are your</p> <p>5 main responsibilities?</p> <p>6 A My main responsibility is to</p> <p>7 drive the company's strategy, to drive the</p> <p>8 company's -- (undecipherable) -- and</p> <p>9 actually to do my best to make project</p> <p>10 successful.</p> <p>11 Q And can you describe Equativ's</p> <p>12 business at a high level?</p> <p>13 A Equativ is, was -- it's clear,</p> <p>14 the question is clear Equativ --</p> <p>15 (undecipherable).</p> <p>16 Q Can you describe Equativ's</p> <p>17 business at a high level?</p> <p>18 A We are an ad tech company, so</p> <p>19 advertising technology company until 2015</p> <p>20 and we were operating on the ad server</p> <p>21 business only. So we were on a server.</p> <p>22 Our formal name was Smart Server and we</p> <p>23 were an ad server standalone operating only</p> <p>24 on this business since 2014 or 2015. We</p> <p>25 started to operate both on the ad server on</p>
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<p>1 please do your best to answer audibly as</p> <p>2 opposed to using gestures, which I am doing</p> <p>3 right now, or um, or nodding your head.</p> <p>4 Does that make sense?</p> <p>5 THE INTERPRETER: Okay. The</p> <p>6 interpreter will translate everything</p> <p>7 that is being said.</p> <p>8 A That's fine. All clear. Thank</p> <p>9 you. Yeah.</p> <p>10 Q And then the second guideline is</p> <p>11 in one way this is not like a normal</p> <p>12 conversation. Please do your best to let</p> <p>13 me finish my question before you start your</p> <p>14 answer. And by the same -- on the same</p> <p>15 hand, I will also try to do my best to let</p> <p>16 you finish your answer before I start</p> <p>17 another question.</p> <p>18 Does that make sense?</p> <p>19 A Clear enough. It's okay. Thank</p> <p>20 you.</p> <p>21 Q So I think you are the CEO of</p> <p>22 Equativ, is that right?</p> <p>23 A Right.</p> <p>24 Q How long have you been the CEO</p> <p>25 of Equativ?</p>	<p>1 the SSP business. So we are today an ad</p> <p>2 server and an SSP.</p> <p>3 Q And I think you work and live in</p> <p>4 France, is that right?</p> <p>5 A The headquarters are in France.</p> <p>6 We have positions globally. So we have</p> <p>7 offices in 18 different countries,</p> <p>8 including U.S.</p> <p>9 Q And where is your personal</p> <p>10 office?</p> <p>11 A I am in Paris. I am located in</p> <p>12 Paris, traveling something like two weeks</p> <p>13 per month, and one week per month in the</p> <p>14 U.S., but my main office is in Paris.</p> <p>15 Q Do you have an office in the</p> <p>16 U.S.?</p> <p>17 A We have an office in New York</p> <p>18 City, yes.</p> <p>19 Q When you work in the U.S., do</p> <p>20 you work from New York?</p> <p>21 A Yes.</p> <p>22 Q Okay. Is there anywhere else in</p> <p>23 the U.S. that you regularly work?</p> <p>24 A Most of our team is in the U.S.,</p> <p>25 or 85 people are in the U.S. We have a few</p>

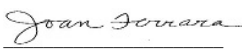
<p style="text-align: right;">Page 10</p> <p>1 person located outside of New York in</p> <p>2 Miami, in Chicago and some of the cities in</p> <p>3 the U.S. But most of the teams are in New</p> <p>4 York City.</p> <p>5 Q And then you, personally, do you</p> <p>6 have any other offices in the U.S. that you</p> <p>7 regularly work at?</p> <p>8 A No, we don't. We don't. We</p> <p>9 don't.</p> <p>10 Q And do you have any homes in the</p> <p>11 U.S.?</p> <p>12 A Any what, sorry, any -- no, I</p> <p>13 don't have.</p> <p>14 Q Okay. Do you understand that</p> <p>15 you have sworn to answer all questions in</p> <p>16 this deposition truthfully?</p> <p>17 A Yes.</p> <p>18 Q Okay. Do you understand that</p> <p>19 the information you provide during this</p> <p>20 deposition may be used by the Department of</p> <p>21 Justice in other civil, criminal,</p> <p>22 administrative or regulatory cases or</p> <p>23 proceedings?</p> <p>24 A Yes, I do.</p> <p>25 Q Okay. So I'd like to ask you</p>	<p style="text-align: right;">Page 12</p> <p>1 MR. VERNON: Sure.</p> <p>2 BY MR. VERNON:</p> <p>3 Q I want to define the phrase</p> <p>4 media publisher to mean a text-based</p> <p>5 publisher that uses direct and indirect</p> <p>6 display ads like CNN or Lamond.</p> <p>7 Does that make sense?</p> <p>8 MR. JUSTUS: Objection. Form.</p> <p>9 A Actually, this is a publisher</p> <p>10 Digital One, which is building content on</p> <p>11 the internet and which is building its</p> <p>12 business around different models and can be</p> <p>13 subscription-based, like the New York Times</p> <p>14 was selling the newspaper online and</p> <p>15 offline, and which also, you know, requires</p> <p>16 diverse news in a vast majority relying on</p> <p>17 advertising as well, on especially digital</p> <p>18 advertising.</p> <p>19 So Media Publishing Group is a</p> <p>20 company which is treating contents for the</p> <p>21 user for internet users actually.</p> <p>22 Q Okay. And when I use the phrase</p> <p>23 media publisher, I'm not talking about</p> <p>24 streaming video websites like Netflix or</p> <p>25 companies like a video game publisher.</p>
<p style="text-align: right;">Page 11</p> <p>1 some questions about publisher ad servers.</p> <p>2 Is that okay?</p> <p>3 A Okay.</p> <p>4 Q I think you said -- well, when</p> <p>5 did Equativ start operating in the</p> <p>6 publisher ad server business?</p> <p>7 A We started actually the ad</p> <p>8 server of Equativ was in our solution for</p> <p>9 the needs of the mother company at the</p> <p>10 start. So it started in '21. We started</p> <p>11 to sell the solution to publisher groups in</p> <p>12 2005. So this is 18 years ago. So the</p> <p>13 start of the business around ad serving</p> <p>14 solutions was 2005.</p> <p>15 Q Let me define a word for</p> <p>16 purposes of my questions. I want to define</p> <p>17 the phrase media publisher to mean a</p> <p>18 text-based publisher that uses direct and</p> <p>19 indirect display ads like CNN or Lamond.</p> <p>20 Does that make sense?</p> <p>21 A I should translate. I think I</p> <p>22 have the sense of the question, but please</p> <p>23 translate directly.</p> <p>24 THE INTERPRETER: Could you</p> <p>25 please repeat the question?</p>	<p style="text-align: right;">Page 13</p> <p>1 Does that make sense?</p> <p>2 MR. JUSTUS: Objection. Form.</p> <p>3 A Yes.</p> <p>4 THE INTERPRETER: The</p> <p>5 interpreters will search.</p> <p>6 MR. VERNON: Thank you. This is</p> <p>7 all new to me.</p> <p>8 BY MR. VERNON:</p> <p>9 Q In the last 10 years, how many</p> <p>10 large media publisher ad server clients has</p> <p>11 Equativ lost to Google's DFP?</p> <p>12 MR. JUSTUS: Objection. Form.</p> <p>13 A So actually this is half of the</p> <p>14 publishers working with us over the past 10</p> <p>15 years move to ad server, and I would say 95</p> <p>16 percent of them moved to Google Ad Manager,</p> <p>17 Google DFP.</p> <p>18 Q Can you list some of the large</p> <p>19 media publisher ad server clients that</p> <p>20 Equativ has lost to DFP?</p> <p>21 MR. JUSTUS: Objection. Form.</p> <p>22 A I can list a few ones. If you</p> <p>23 want, actually, what you need to understand</p> <p>24 is that we started our business in New Hope</p> <p>25 at the time where it was -- it was not</p>

<p style="text-align: right;">Page 22</p> <p>1 A And the second point was what we</p> <p>2 just said, the costs and risks linked to</p> <p>3 the migration.</p> <p>4 THE INTERPRETER: And the</p> <p>5 interpreters will now switch.</p> <p>6 MR. VERNON: I took French in</p> <p>7 high school and I've been bad about</p> <p>8 keeping it up. But I can understand</p> <p>9 some of it, not as much as you can</p> <p>10 understand English, though.</p> <p>11 A So there's a third point.</p> <p>12 So the third point is what we</p> <p>13 call in English the bundle of Google</p> <p>14 products. So that means that Google sells</p> <p>15 its solutions in one contract, meaning the</p> <p>16 SSP and the ad server in one contract.</p> <p>17 So that's not the case with the</p> <p>18 offer because you have two contracts, one</p> <p>19 for the ad server and the publisher, and</p> <p>20 one for the DSP.</p> <p>21 I think we have a difficulty</p> <p>22 translating technical terms.</p> <p>23 So from the supply side, the ad</p> <p>24 server or advertiser contract is different</p> <p>25 from the SSP contract.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. JUSTUS: Objection. Form.</p> <p>2 A So on the publisher ad server,</p> <p>3 Google's share is estimated at 90 percent.</p> <p>4 Q How would you characterize</p> <p>5 Google DFP's position in the publisher ad</p> <p>6 server business?</p> <p>7 MR. JUSTUS: Objection. Form.</p> <p>8 A It's dominating and actually</p> <p>9 monopolistic position that it holds.</p> <p>10 Q Why do you say that Google's DFP</p> <p>11 has a dominating or monopolistic position?</p> <p>12 MR. JUSTUS: Objection. Form.</p> <p>13 A When you talk with publishers,</p> <p>14 the largest publishers in the different</p> <p>15 countries, they all talk about Google's</p> <p>16 predominance.</p> <p>17 Q If Equativ and DFP were only</p> <p>18 competing on the basis of which has the</p> <p>19 best product, without regard to access to</p> <p>20 demand from AdX, but just which has the</p> <p>21 best product --</p> <p>22 MR. JUSTUS: Objection.</p> <p>23 Speculative.</p> <p>24 Q -- how effectively would Equativ</p> <p>25 be able to compete with DFP?</p>
<p style="text-align: right;">Page 23</p> <p>1 Q I think -- okay, let me try</p> <p>2 this. I think what he is saying -- let me</p> <p>3 see if I can get this.</p> <p>4 On the demand side, there are</p> <p>5 different contracts for the advertiser ad</p> <p>6 server and the DSP, is that right?</p> <p>7 THE INTERPRETER: Yes, that's</p> <p>8 correct. The interpreter apologizes.</p> <p>9 BY MR. VERNON:</p> <p>10 Q On the supply side for Google,</p> <p>11 there is one contract for the publisher ad</p> <p>12 server and the SSP, is that right?</p> <p>13 MR. JUSTUS: Objection. Form.</p> <p>14 Q I don't know if you answered.</p> <p>15 A Yes, it's clear.</p> <p>16 Q I think you said before that</p> <p>17 when Equativ lost media publisher ad server</p> <p>18 clients, it lost about 95 percent of them</p> <p>19 to Google's DFP, is that right?</p> <p>20 MR. JUSTUS: Objection. Form.</p> <p>21 A Yes, right.</p> <p>22 Q What's your understanding of --</p> <p>23 what's your understanding of the market</p> <p>24 share of Google's DFP as a publisher ad</p> <p>25 server among media publishers?</p>	<p style="text-align: right;">Page 25</p> <p>1 MR. JUSTUS: Objection. Form.</p> <p>2 A When it comes to products, both</p> <p>3 products have their pros and cons.</p> <p>4 MR. JUSTUS: One second. Sorry.</p> <p>5 I'm sorry to stop you.</p> <p>6 So we have an objection on the</p> <p>7 translation that we might have a</p> <p>8 clarification for.</p> <p>9 Can you go ahead, Mr. Check</p> <p>10 Interpreter.</p> <p>11 CHECK INTERPRETER: Rather than</p> <p>12 pros and cons, I would say strengths</p> <p>13 and weaknesses. A bit of a nuance.</p> <p>14 MR. JUSTUS: Okay. You can go</p> <p>15 ahead.</p> <p>16 A So when we are talking about the</p> <p>17 strength, first of all, we have an</p> <p>18 intuitive interface.</p> <p>19 Second of all, we have complete</p> <p>20 interoperability, which is something that</p> <p>21 we have for all market solutions.</p> <p>22 And third of all, we are</p> <p>23 independent, and so that means that Equativ</p> <p>24 has no -- does not have any media</p> <p>25 ownership.</p>

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<p>1 BY MR. VERNON:</p> <p>2 Q And I think you said you wanted</p> <p>3 competition to be fair and transparent.</p> <p>4 Do you remember that?</p> <p>5 A Yes.</p> <p>6 Q Why do you want competition to</p> <p>7 be fair and transparent?</p> <p>8 A First of all, because that is</p> <p>9 how all markets should function.</p> <p>10 And secondly, because as I</p> <p>11 mentioned earlier, it is a hinderance to</p> <p>12 competition and consequently to innovation</p> <p>13 and because we are in a market where the</p> <p>14 take rate, as I said before -- where the</p> <p>15 take rates, as I said before, are too high.</p> <p>16 Q Do you think competition for</p> <p>17 Google -- I'm sorry, let me back up.</p> <p>18 When you said the take rates are</p> <p>19 too high, what did you mean by that?</p> <p>20 A A few years ago, Google</p> <p>21 communicated a take rate, an average take</p> <p>22 rate for each advertising transaction on</p> <p>23 the order of 32 percent. That includes</p> <p>24 supply side fees and demand side fees.</p> <p>25 Just imagine the New York Stock</p>	<p>1 going off the record. The time is</p> <p>2 11:41.</p> <p>3 (Recess taken 11:41 a.m.)</p> <p>4 (Resumed 11:48 a.m.)</p> <p>5 THE VIDEOGRAPHER: We are now</p> <p>6 back on the record. The time is</p> <p>7 11:48.</p> <p>8 EXAMINATION (CONTINUED)</p> <p>9 BY MR. JUSTUS:</p> <p>10 Q Have you done any studies</p> <p>11 regarding the viability of a divesture</p> <p>12 remedy in this case?</p> <p>13 A You're talking about the ad</p> <p>14 server in particular?</p> <p>15 Q No. The viability of the</p> <p>16 divesture of any Google product in response</p> <p>17 to antitrust concerns.</p> <p>18 A I have not conducted any</p> <p>19 specific studies, but I would assume that</p> <p>20 this business would remain very solid.</p> <p>21 MR. JUSTUS: I think that's our</p> <p>22 last question.</p> <p>23 MR. VERNON: I just want to say</p> <p>24 thank you to everybody, including</p> <p>25 Arnaut, counsel, counsel for Google,</p>
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<p>1 Exchange if it took a 32 percent commission</p> <p>2 on every market transaction.</p> <p>3 The functioning of a digital</p> <p>4 programmatic advertising system is very</p> <p>5 similar to the functioning of a market such</p> <p>6 as the New York Stock Exchange.</p> <p>7 Q Do you think Google competes in</p> <p>8 a fair and transparent manner in the</p> <p>9 display advertising technology business</p> <p>10 today?</p> <p>11 MR. JUSTUS: Objection. Form.</p> <p>12 A I think everything I said so far</p> <p>13 shows that I don't believe that at all.</p> <p>14 MR. VERNON: We reserve the</p> <p>15 balance of our time and pass the</p> <p>16 witness back.</p> <p>17 MR. JUSTUS: All right. We're</p> <p>18 going to take a couple of minutes.</p> <p>19 We'll be back.</p> <p>20 MS. ARYANKALAYIL: How long do</p> <p>21 you need, Brad?</p> <p>22 MR. JUSTUS: Two or three</p> <p>23 minutes probably.</p> <p>24 MS. ARYANKALAYIL: Okay.</p> <p>25 THE VIDEOGRAPHER: We are now</p>	<p>1 the court reporter and the</p> <p>2 translators.</p> <p>3 Thank you for taking the time to</p> <p>4 talk to us, and we really appreciate</p> <p>5 it, and I hope you don't miss your</p> <p>6 train.</p> <p>7 THE VIDEOGRAPHER: This</p> <p>8 concludes today's deposition. We are</p> <p>9 going off the record at 11:50.</p> <p>10 (Time noted 11:50 a.m.)</p> <p>11 * * *</p> <p>12</p> <p>13</p> <p>14</p> <p>15 _____</p> <p>16 ARNAUD CREPUT</p> <p>17</p> <p>18</p> <p>19</p> <p>20 Subscribed and sworn to</p> <p>21 before me this day</p> <p>22 of , 20__</p> <p>23</p> <p>24 _____</p> <p>25 NOTARY PUBLIC</p>

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1	DEPOSITION ERRATA SHEET
2	
3	Case Caption:
4	UNITED STATES
5	vs.
6	GOOGLE LLC
7	DECLARATION UNDER PENALTY OF PERJURY
8	I declare under penalty of perjury
9	that I have read the entire transcript
10	of my deposition taken in the captioned
11	matter or the same has been read to me,
12	and the same is true and accurate, save
13	and except for changes and/or corrections,
14	if any, as indicated by me on the
15	DEPOSITION ERRATA SHEET hereof, with the
16	understanding that I offer these changes
17	as if still under oath.
18	
19	SIGNATURE _____ DATE: _____
20	ARNAUD CREPUT
21	Subscribed and sworn to on the ____ day of
22	_____, 20__ before me,
23	Notary Public,
24	in and for the State of _____
25	

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1	REPORTER CERTIFICATE
2	
3	I, JOAN FERRARA, do hereby certify:
4	That said deposition was taken at the
5	time and place herein named; and that the
6	transcript is a true record of the testimony
7	as reported by me, a disinterested person,
8	and was thereafter transcribed.
9	I further certify that I am not
10	interested in the outcome of the said
11	action, nor connected with, nor related to
12	any of the parties in said action, nor to
13	their respective counsel.
14	IN WITNESS WHEREOF, I have hereunto
15	set my hand this 5th day of September, 2023.
16	
17	
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19	
20	JOAN FERRARA, RMR, CFRR
21	
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1	DEPOSITION ERRATA SHEET
2	
3	Page No. ____ Line No. ____ Change
4	to: _____
5	Reason for
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15	Reason for
16	change: _____
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19	to: _____
20	Reason for
21	change: _____
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23	SIGNATURE: _____ DATE: _____
24	ARNAUD CREPUT
25	